In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 329

HUMBLE PIPE LINE COMPANY, PETITIONER

v.

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF BOSSIER PARISH, LOUISIANA

No. 354

NATURAL GAS AND OIL CORPORATION AND MISSISSIPPI RIVER FUEL CORPORATION, PETITIONERS

v.

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF BOSSIER PARISH, LOUISIANA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

Although the United States has no financial stake in the outcome of these cases, the basic question in suit—whether the United States has exclusive jurisdiction over Barksdale Air Force—is a matter of primary concern to the United States. Upon the answer

to that question turns not only the susceptibility of persons doing business or having property on the Base to State taxation but also the applicability within the Base of the State's criminal and civil law.

As the petitions for certiorari fully demonstrate, the decision below is clearly wrong. There can be no question that, upon the acquisition of the Base in 1930 with the express consent of, and grant of exclusive jurisdiction by, the Louisiana legislature (see No. 329, Pet. 10–11), the United States acquired the power accorded by the United States Constitution (Art. I, § 8, cl. 17) "To exercise exclusive Legislation in all Cases whatsoever" in the area acquired. It is equally clear that a State lacks power to tax property located within an area of exclusive federal jurisdiction. *Surplus Trading Co.* v. *Cook*, 281 U.S. 647. Any intimation to the contrary in the opinion below or in that of the Louisiana Supreme Court in *Murphy Corp.* v. *Fontenot*, 225 La. 379, 73 So. 2d 180, which the court below followed, is a product of the persistent confusion in those opinions of the questions of the *immunity* of the United States and its instrumentalities from State taxation and of a State's lack of *jurisdiction* within federal enclaves.

Nothing has occurred since 1930 to cause the loss of the exclusive jurisdiction over the Base then acquired. Exclusive jurisdiction is not lost either by the lease of property within the enclave for commercial use (*Arlington Hotel Co.* v. *Fant*, 278 U.S. 439) or by a grant to a public utility of a right of way across the enclave (*United States* v. *Unzeuta*, 281 U.S. 138). And the

suggestion that the Base's purchase of water from the Parish and the attendance of Base children at State schools (for which the United States makes a contribution to the schools) "manifested an intent on the part of the Federal Government not to exercise" or to "accept" exclusive jurisdiction (No. 329, Pet. 47, 32), is a *non sequitur* requiring no answer.

The final circumstance relied upon by the court below to find a waiver of jurisdiction was the inclusion in the oil lease of a provision requiring the lessee "To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States" upon the property of the lessee. That clause, a standard provision routinely included in all oil leases, only allocates the responsibility between lessor and lessee to see to the payment of whatever taxes are otherwise "lawfully assessed" and in no way purports to confer a jurisdiction to tax otherwise lacking. In any event, a waiver of exclusive jurisdiction to permit the assessment of State taxes within an enclave can be made only by Congress (as it did for gasoline, sales, and income taxes in the so-called Buck Act, 4 U.S.C. 104–110), not by an administrative agreement to a clause in an oil lease.

The question is important. Apart from the District of Columbia, there are within the United States more than 5,000 areas, on which about a million persons reside, that are considered by the United States to be within its exclusive jurisdiction. If such events as the lease of property within the enclave to private enterprises, the purchase of water from municipali-

ties, or the use of the local school system may cause a loss of exclusive jurisdiction, as the court below seems to hold,[1] the status of many, if not most, of those areas—and the laws by which their residents are governed—has been cast in doubt.

For the reasons stated above and in the petitions, the petitions for certiorari in these cases should be granted.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.
ROGER P. MARQUIS,
Attorney.

SEPTEMBER 1963.

[1] Nor can the decision be explained as a mere aberration unlikely to be repeated. The decision of the Court of Appeal here merely follows the prior decision of the Louisiana Supreme Court in the *Murphy* case, *supra*, holding that Louisiana could impose a severance tax on the production of gas and oil within the Base. See also *International Business Machines Corp.* v. *Ott*, 230 La. 666, 89 So. 2d 198. The Louisiana Supreme Court's comment, in denying review of the decision below in this case, that the judgment "is correct" (No. 329, Pet. 51), is but a final reaffirmation of the settled view of the Louisiana courts. The imposition of the severance tax on oil and gas production within the Base has also been upheld by the United States Court of Appeals for the Fifth Circuit. *Mississippi River Fuel Corp.* v. *Fontenot*, 234 F. 2d 898, certiorari denied, 352 U.S. 916.

U.S. GOVERNMENT PRINTING OFFICE: 1963